IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
June 4, 2007 Session

VALUE MOTOR COMPANY, INC. v. REAGAN FARR,[1] COMMISSIONER OF REVENUE, STATE OF TENNESSEE

Appeal from the Chancery Court for Putnam County
No. 03-31 Vernon Neal, Chancellor

No. M2006-02024-COA-R3-CV - Filed January 28, 2008

The issue on appeal pertains to the repossession tax credit stated in Tenn. Code Ann. § 67-6-507(d). The plaintiff is a used car dealer that provided dealer financing to facilitate the sale of its inventory. When audited, the Department of Revenue determined that the dealer was impermissibly inflating the repossession tax credit by including in the unpaid balance owing the cost of refinancing, the cost of subsequent repairs financed by the dealer, and the indebtedness owing by the customer for vehicles that were traded in to facilitate the purchase of the vehicle that was subsequently repossessed. After the Department assessed the dealer $134,000 in sales and use tax, the dissatisfied dealer filed suit in the Chancery Court contesting the assessment. The Chancellor determined *inter alia* the dealer was entitled to a credit "for the unpaid sales tax on the principal balance owed on the first vehicle traded in and on the second vehicle acquired as a result of the trade-in when sold on a security agreement or other title retained instrument" when the dealer repossesses the second vehicle. We have determined the repossession tax credit under Tenn. Code Ann. § 67-6-507(d) does not extend to the debt on the first vehicle. The statute only affords a repossession tax credit on the balance owing on the purchase price of the vehicle that was repossessed.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Reversed

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and PATRICIA J. COTTRELL, J., joined.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; Charles L. Lewis, Deputy Attorney General; Jeffrey O. Usman and Wyla M. Posey, Assistant Attorney Generals, for the appellant, Ruth E. Johnson, Commissioner of Revenue, State of Tennessee.

Dale Bohannon, Cookeville, Tennessee, for the appellee, Value Motor Company, Inc.

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[1] Commissioner Reagan Farr has been substituted as a party in the place of Commissioner Ruth Johnson in accordance with Tenn. R. App. P. 19(c).

OPINION

Value Motor Company, Inc. sells used cars and trucks. Many of its customers have poor credit and cannot qualify for commercial financing; therefore, Value Motor provides seller financing for those customers at interest rates up to 23.99% pursuant to a retail installment contract and security agreement. Not surprisingly, many of its financially challenged customers fail to satisfy their financial obligations to Value Motor, in which event Value Motor repossesses the vehicle. Tenn. Code Ann. § 67-6-507 affords sellers of personal property, such as automobiles, a repossession tax credit. The matters in dispute pertain to the amount of the repossession tax credit claimed by Value Motor following repossession.

For the period December 1, 1997 through September 30, 2001, Value Motor claimed a repossession tax credit for one hundred forty-nine vehicles it repossessed from its customers. Sixty-seven of the vehicles repossessed had been "refinanced" and additional charges and expenses were added by Value Motor at a time subsequent to the sale of the vehicle. Eighty-two of the vehicles repossessed were part of a trade-in transaction, wherein a vehicle the customer had purchased from Value Motor was traded-in for the vehicle that was subsequently repossessed. In all of these instances Value Motor claimed a repossession tax credit on the total outstanding balance owed to Value Motor at the time of repossession although much of the outstanding balance did not pertain to the purchase price of the vehicle repossessed.

The claimed tax credit came under scrutiny when Value Motor was audited by the Tennessee Department of Revenue for the period December 1, 1997 through September 30, 2001. Catching the eye of the auditor were claimed repossession tax credits for the one hundred forty-nine repossessed vehicles referenced above. After conducting the tax audit, the Department denied much of the claimed tax credits and assessed Value Motor a total of $134,603.39. Specifically, the Department assessed Value Motor $101,118 for sales and use tax, plus a penalty in the sum of $10,949 and interest in the sum of $22,536.39.[2] The Notice of Assessment was mailed to Value Motor on March 18, 2002.

On January 24, 2003, Value Motor filed this action in the Chancery Court for Putnam County contending the Department's assessment was incorrect. Value Motor contended its method of calculating sales and use tax was permitted pursuant to Tenn. Code Ann. § 67-6-507(d). The Department filed an Answer and Counterclaim seeking, *inter alia*, a judgment against Value Motor for the assessment amount.

The case proceeded to trial following which the Chancery Court issued a Memorandum and Opinion on February 22, 2006. Relevant to this appeal, the Chancellor ruled that Value Motor was entitled to a repossession tax credit including the debt on any vehicle that was traded in as part of the purchase of another vehicle that was later repossessed by Value Motor. In addition, the Chancellor held that Value Motor is entitled to a sales tax credit on the unpaid principal balance on

[2] Value Motor also owed franchise/excises taxes, business taxes, and interest and penalties on both; however, these assessments are not at issue on appeal.

what the Chancellor identified as "a liened one vehicle transaction," one that was later refinanced and then repossessed. The Chancery Court, however, rejected Value Motor's argument that repair costs could be included in the "unpaid purchase price." On August 23, 2006, the court entered its Final Judgment, in which it reduced the sales and use tax assessment by $83,346.63.

The Department appeals the Chancery Court's ruling on the repossession credit and the reduction of its assessment thereto. The issue as stated in the Department's brief reads:

> Whether the Chancery Court erred in determining that the sales tax credit under Tenn. Code Ann. § 67-6-507(d) upon repossession of a vehicle, which equals the difference between the amount of taxes collected at the time of the original purchase and the amount of taxes owed on the portion of the purchase price actually paid by the purchaser, includes taxes on the debt on a different vehicle that was traded in as part of the purchase of the vehicle that was later repossessed.

For its part, Value Motors contends the judgment of the Chancellor should be affirmed and it should receive its attorneys fees and expenses in accordance with Tenn. Code Ann. § 67-1-1803(d).

STANDARD OF REVIEW

The issue before us involves the interpretation of a statute, the construction of which is a question of law. The standard of review for questions of law is the de novo standard. *Gleaves v. Checker Cab Transit Corp., Inc*., 15 S.W.3d 799, 802 (Tenn. 2000).

The primary rule of statutory construction is "to ascertain and give effect to the intention and purpose of the legislature." *Carson Creek Vacation Resorts, Inc. v. Dep't of Revenue*, 865 S.W.2d 1, 2 (Tenn. 1993); *McGee v. Best*, 106 S.W.3d 48, 64 (Tenn. Ct. App. 2002). Our duty is to seek a reasonable construction "in light of the purposes, objectives, and spirit of the statute based on good sound reasoning." *Scott v. Ashland Healthcare Center, Inc.*, 49 S.W.3d 281, 286 (Tenn. 2001), citing *State v. Turner*, 913 S.W.2d 158, 160 (Tenn. 1995). To determine legislative intent, we must look to the natural and ordinary meaning of the language in the statute. We must also examine any provision within the context of the entire statute and in light of its over-arching purpose and the goals it serves. *State v. Flemming*, 19 S.W.3d 195, 197 (Tenn. 2000); *T.R. Mills Contractors, Inc. v. WRH Enter., LLC*, 93 S.W.3d 861, 867 (Tenn. Ct. App. 2002). The statute should be read "without any forced or subtle construction which would extend or limit its meaning." *Nat'l Gas Distrib., Inc. v. State*, 804 S.W.2d 66, 67 (Tenn. 1991).

We are to "give effect to every word, phrase, clause and sentence of the act in order to carry out the legislative intent." *Tidwell v. Collins*, 522 S.W.2d 674, 676-77 (Tenn. 1975); *In re Estate of Dobbins*, 987 S.W.2d 30, 34 (Tenn. Ct. App. 1998). We must also presume the General Assembly selected their words deliberately, *Tenn. Manufactured Housing Ass'n. v. Metro. Gov't*., 798 S.W.2d 254, 257 (Tenn. Ct. App. 1990), and the use of their words conveys some intent and carries meaning

and purpose. *Tennessee Growers, Inc. v. King*, 682 S.W.2d 203, 205 (Tenn. 1984); *Clark v. Crow*, 37 S.W.3d 919, 922 (Tenn. Ct. App. 2000).

ANALYSIS

Before we begin our analysis, it is important to recognize the rules of construction that are applicable to taxation statutes and specifically the difference in construing a statute that imposes a tax versus one that affords a tax credit. Statutes imposing a tax should be construed strictly against the government. *SunTrust Bank, Nashville v. Johnson*, 46 S.W.3d 216, 224 (Tenn. Ct. App. 2000) (citing *Steele v. Industrial Dev. Bd.,* 950 S.W.2d 345, 348 (Tenn. 1997); *Covington Pike Toyota, Inc. v. Cardwell*, 829 S.W.2d 132, 135 (Tenn. 1992)). Statutes granting credits or exemptions, however, should be construed strictly against the taxpayer. *AFG Indus., Inc. v. Cardwell*, 835 S.W.2d 583, 584-85 (Tenn. 1992); *Herald v. Johnson*, 19 S.W.3d 241, 244 (Tenn. Ct. App. 2000); *see Weyerhaeuser Co. v. Chumley*, No. M2005-00212-COA-R3-CV, 2007 WL 2580025, at *2 (Tenn. Ct. App. Sept. 7, 2007) (citing *SunTrust Bank, Nashville v. Johnson*, 46 S.W.3d 216, 226-27 (Tenn. Ct. App. 2000) (holding that statutes providing exceptions such as tax credits should be construed strictly against the taxpayer). The party claiming the credit, therefore, carries the burden of demonstrating that it is entitled to the relief it seeks, that it fits "within the language of the statute authorizing the credit." *SunTrust Bank, Nashville*, 46 S.W.3d at 224 (citing *AFG Indus., Inc. v. Cardwell*, 835 S.W.2d at 584-85; *Nuclear Fuel Servs., Inc. v. Huddleston*, 920 S.W.2d 659, 661 (Tenn. Ct. App. 1995) (other citations omitted)). Thus, tax credits must "positively appear" in the statutes themselves, and no subject of taxation will be excluded if it comes within the "fair purview" of the statutes. *English's Estate v. Crenshaw*, 120 Tenn. 531, 537-38, 110 S.W. 210, 211 (1908); *Nashville Clubhouse, Inn v. Johnson*, 27 S.W.3d 542, 544 (Tenn. Ct. App. 2000). Accordingly, Value Motor must demonstrate that its method of calculating the repossession tax credit fits within the applicable statute, which in this case is Tenn. Code Ann. § 67-6-507(d).

The duty of this court is to seek a reasonable construction "in light of the purposes, objectives, and spirit of the statute based on good sound reasoning." *Scott v. Ashland Healthcare Center, Inc.*, 49 S.W.3d 281, 286 (Tenn. 2001)(citing *State v. Turner*, 913 S.W.2d 158, 160 (Tenn. 1995)). To determine legislative intent, we must look to the natural and ordinary meaning of the language in Tenn. Code Ann. § 67-6-507(d).

Two statutes and one regulation are critical to the issues on appeal. The first is the statute that affords a dealer that sells an article of personal property on a security agreement a credit against the sales tax in the event the dealer shall thereafter be required to repossess or enforce the dealer's lien on the article or personal property when the balance due on the unpaid purchase price exceeds $500. Tenn. Code Ann. § 67-6-507(d).

The relevant Regulation provides that the calculation of the repossession credit shall be based on the unpaid balance which constitutes principal, and that interest, carrying charges or any similar charges shall not be included. Tenn. Comp. R. & Regs. 1320-5-1-.52. A second statute relevant to this discussion, Tenn. Code Ann. § 67-6-510, pertains to what is identified as "trade-in sales." This statute provides that where used articles are taken in trade as a credit or part payment on the sale of another article, "the tax levied by this chapter shall be paid on the net difference, that is, the price

of the new or used article sold, less the credit for the used article taken in trade." Tenn. Code Ann. § 67-6-510(a).

The repossession tax credit, as codified at Tenn. Code Ann. § 67-6-507(d), reads as follows:

> In the event a dealer shall sell any article of personal property on a security agreement or other title retained instrument and the dealer shall thereafter be required to repossess or enforce the dealer's lien on the article or personal property at a time when the balance due on the unpaid purchase price shall exceed five hundred dollars ($500), *the dealer shall be entitled to a credit on the sales tax that the dealer shall be required to collect and remit to the commissioner, in an amount equal to the difference between the amount of the sales tax collected and paid at the time of the original purchase and the amount of sales tax that would be owed on that portion of the purchase price that has actually been paid by the purchaser*, plus the sales tax on the first five hundred dollars ($500) of the unpaid balance of the purchase price. (emphasis added).

The Regulation most relevant to the issues on appeal, Tenn. Comp. R. & Regs. 1320-5-1-.52, which is titled "REPOSSESSIONS" provides:

> (1) *The unpaid balance to be considered in the calculation of the repossession credit allowed by T.C.A. 67-6-507(d) is only that which constitutes principal*, *and shall not include interest, carrying charges or any similar charges*. Any dealer claiming such a deduction or deductions shall preserve, as a part of the official records of his business, full information concerning the sale and subsequent repossession of the subject item of personal property; information shall include identification of parties and items involved, the dates of the sale and repossession, the amount of the original price to the purchaser upon which sales tax was due to be paid, and the amount of unpaid balance which forms the basis for the deduction.

With the foregoing statutes and regulation in mind, we will discuss all three scenarios.

THE TRADE-IN SCENARIO

The practice of a customer trading a vehicle in as a credit toward the purchase of another vehicle is not foreign or confusing. However, the creative accounting employed by Value motor to claim a repossession tax credit is most difficult to explain. Accordingly, we will explain this scenario by referring to an example as it was explained to the trial court. In this example, Mr. and Mrs. Sandlin purchased a vehicle from Value Motor, which was financed by Value motor and then traded for the purchase of a second vehicle from Value Motor. The purchase of both vehicles was financed by Value Motor.

The Sandlins purchased a 1989 Ford Bronco from Value Motor for a principal cash price of $4,995. The Sandlins paid $726.52 as a cash down payment for the Bronco, which resulted in an unpaid principal balance of $4,268.48. In addition to the principal, the Sandlins paid $391.52 in

sales tax. In total, the Sandlins financed $4,850, which included additional fees and the sales tax. This transaction was memorialized by a contract, that being the "first" contract in this example.

Five days later, apparently dissatisfied with the Ford Bronco, the Sandlins returned the Bronco to Value Motor and, pursuant to a fairly complex transaction involving a "second" contract, traded for a 1991 Dodge Dakota. The purchase price of the Dodge Dakota was $5,990. Value Motor gave the Sandlins a trade in allowance of $4,995 for the Ford Bronco, and the payoff amount was $4,890.94, which represented the amount owed on the contract. Instead of treating the transaction as a return, Value Motor and the Sandlins executed a second contract in which the balance owing on the first vehicle was added to the contract for the purchase of the Dodge Dakota. On the second contract, the Sandlins put down $200 in cash toward the Dodge Dakota, and only paid $107.56 in sales tax for the Dodge Dakota, which was based on $995, being the difference between the Bronco and the Dodge Dakota on second contract. The Sandlins paid sales tax only on the difference between the trade in and the purchase price of the Dodge Dakota. Approximately two weeks after executing the second contract, which was for the Dodge Dakota, Value Motors repossessed the Dodge Dakota from the Sandlins. At the time of repossession, the Sandlins had not made any payments towards the vehicle.

After repossessing the Dodge Dakota, Value Motor took a repossession tax credit on the entire indebtedness owing at the time of the repossession, which was $5,263. Of that amount, however, $4,268 was for the purchase of the Ford that had been returned and applied as a credit toward the purchase of the Dodge Dakota. Value Motor took a repossession tax credit based on the amount of $5,263.[3] The Department, however, relying on Tenn. Code Ann. § 67-6-507(d), took the position that Value Motor was only entitled to a repossession tax credit based on $995, the purchase price upon which Value Motor collected sales tax for the Dodge Dakota. We have determined the Department is correct for a couple of reasons.

One, the repossession tax credit is calculated in part by applying "the amount of the sales tax collected and paid *at the time of the original purchase*." Tenn. Code Ann. § 67-6-507(d). In the aforementioned example, the vehicle repossessed was the 1991 Dodge Dakota, and there was only one "original purchase" of the repossessed vehicle. The Retail Installment Contract and Security Agreement for the original purchase of the Dodge Dakota was assigned the account number, "006776." This number corresponds to the account number listed on the Notification of Repossession. At the time of the original purchase of the Dodge Dakota, Value Motor collected and the Sandlins paid sales tax in the amount of $107.56, which was calculated on the principal amount of the purchase of the Dodge, being $995. The Sandlins did not make any payments on the Dodge Dakota, and the vehicle was promptly repossessed.

Value Motor impermissibly claimed a repossession tax credit based on the amount of the indebtedness owing to it at the time of repossession, which included the debt owing on the purchase of the Ford Bronco and the Dodge Dakota. It was only permitted to claim a tax credit for the repossession of the Dodge Dakota because it did not repossess the Ford Bronco. Moreover, it was

[3]This amount is subject to the $500 requirement placed on it by Tenn. Code Ann. § 67-6-507(d).

limited to claiming a credit based in part on the amount of the sales tax collected for the purchase of the repossessed vehicle, the Dodge Dakota. Value Motor only collected and remitted to the Department $107.56 for the sale of the repossessed Dodge Dakota. Thus, the calculation of the tax credit for the repossession of the Dodge Dakota is to be based on (1) the amount of sales tax collected and remitted for the sale of the Dodge Dakota, and (2) the unpaid balance of the original amount of principal owing at the time of the original purchase of the Dodge Dakota. The amount the Sandlins owed Value Motor for the purchase of the Ford Bronco would play no part in the calculation of the credit for the repossession of the Dodge Dakota.

REFINANCING THE DEBT AFTER PURCHASE

In this scenario, the customer purchases a vehicle from Value Motor and thereafter defaults on the indebtedness by falling behind in the installment payments. When faced with the possibility of repossession of the vehicle, Value Motor offers the customer an alternative to repossession. The alternative is refinancing the debt by adding to the original indebtedness late fees, unpaid interest and principal among other additional charges. In this scenario, the parties enter into a new financing agreement with an increased indebtedness, some of which does not pertain to the original purchase price. Thereafter, when the customer defaults on the new financing agreement, the vehicle is repossessed, and Value Motor claims a repossession tax credit that is based on the unpaid balance. In this situation, Value Motor calculated the credit based on the unpaid balance owing on the refinanced agreement, which was greater than that owing at the time of the original purchase of the vehicle because additional costs, including interest and carrying or similar charges had been added to the amount of the indebtedness.

The Chancellor held that Value Motor was entitled to a sales tax credit on the unpaid principal balance. We respectfully disagree. As a dealer, Value Motor is entitled to a repossession tax credit based on the difference between the amount of the sales tax collected and paid at the time of the original purchase and the amount of sales tax that would be owed on that portion of the purchase price that has actually been paid by the purchaser, plus the sales tax on the first$500 of the unpaid balance of the purchase price. *See* Tenn. Code Ann. §67-6-507(d). The critical phrase in the statute, as it pertains to this scenario, is "*that portion of the purchase price*." Value Motor is attempting to claim a credit based on an amount greater than *the amount of sales tax that would be owed on that portion of the purchase price that has actually been paid by the purchaser*. In this scenario, Value Motor claimed a credit based on a subsequent increase, one that did not pertain to the original purchase price and which impermissibly included interest and carrying charges. The increased amount does not fit within the credit permitted by the statute. Moreover, Value Motor has the burden of demonstrating the claimed credit fits within the language of the statute authorizing the credit. *See SunTrust Bank, Nashville*, 46 S.W.3d at 224. As previously discussed, a credit will not be presumed or inferred; instead, it must be expressly stated in the statute. *Id*. (holding that exemptions from taxation must "positively appear" in the statutes themselves); *see also English's Estate*, 110 S.W. 210, 211 (Tenn. 1908); *Nashville Clubhouse, Inn*, 27 S.W.3d at 544.

As Tenn. Comp. R. & Regs. 1320-5-1-.52 expressly provides, the unpaid balance to be considered in the calculation of the repossession credit is only that which constitutes principal. Value Motor impermissibly increased the claimed tax credit by adding interest, carrying charges or

any similar charges to increase the unpaid balance. Value Motor is not entitled to the repossession tax credit that is based on an unpaid balance, which includes interest, carrying charges or any similar charges. The calculation is to be based on the unpaid balance of the original amount of principal owing at the time of the original purchase.

REFINANCING TO PAY REPAIRS

In this scenario, the customer finds himself stranded when the vehicle he purchased from Value Motor needs extensive repairs that cost more than the customer can afford to pay. When the customer explains the dilemma to Value Motor, it offers to finance the repair costs. In this scenario, the parties enter into a new financing agreement that includes the cost of repairs and the balance owing on the indebtedness to purchase the vehicle. When the customer falls behind in his financial obligations, Value Motor repossesses the repaired vehicle and claims a repossession tax credit. Value Motor calculates the credit based on the unpaid balance owing on the refinanced agreement, which includes subsequent repair costs and carrying or similar charges unrelated to the purchase of the vehicle.

The Chancellor correctly held that Value Motor was not entitled to a repossession sales tax credit for the added repair costs, stating:

> Looking to the language of T.C.A. § 67-6-507(d), it seems fairly clear that the subsection applies only to the sale of an "article of personal property on a security agreement or other title retained instrument." Repair services incurred after the sale and subsequently added to the balance due on the sales contract would not come within the purview of the statute.

As we explained earlier, the unpaid balance to be considered in the calculation of the repossession credit is only that which constitutes principal owing on the original purchase price. *See* Tenn. Code Ann. § 67-6-507(d); *see also* Tenn. Comp. R. & Regs. 1320-5-1-.52. Value Motor impermissibly increased the claimed tax credit by adding costs of repair, interest, carrying charges and/or similar charges to increase the unpaid balance. Thus, it is not entitled to the repossession tax credit that is based on the additional costs, interest or any similar charges. The calculation is to be based on the unpaid balance of the original amount of principal owing at the time of the original purchase.

THE "RETURN" TAX CREDIT

In his Memorandum Opinion, the Chancellor made an alternative conclusion that "it would appear that [Value Motor] should be able to take a sales tax credit on the return of the first vehicle under the provisions of T.C.A. 67-6-507(c) which gives dealers a tax credit for returns of purchases." We respectfully disagree, concluding that Tenn. Code Ann. § 67-6-507(c) does not afford Value Motor any relief based upon the facts of this case. The "return" tax credit statute reads as follows:

> In the event purchases are *returned* to the dealer by the purchaser or consumer after the tax imposed by this chapter has been collected, or charged to the account of the consumer or user, or, *if the dealer actually refunds the purchase price and the sales tax thereon, to the purchaser or consumer for any other reason*, the dealer shall be entitled to reimbursement of the amount of tax so collected or charged by the dealer, in the manner prescribed by the commissioner; and in case the tax has not been remitted by the dealer to the commissioner, the dealer may deduct the tax in submitting the dealer's return upon receipt of a signed statement of the dealer as to the gross amount of such refunds during the period covered by the signed statement, which period shall not be longer than ninety (90) days.

Tenn. Code Ann. § 67-6-507(c) (emphasis added).

As discussed above, Value Motor, as the party claiming the tax credit, carries the burden of demonstrating it fits "within the language of the statute authorizing the credit." Accordingly, Value Motor must demonstrate that it is entitled to the "return" credit at issue based upon the facts as they appear in this record.

It is evident from the facts of this case that Value Motor did not treat the transactions at issue as returns. One of the most compelling facts demonstrating that Value Motor did not treat any of the transactions as a "return" is that Value Motor did not *refund the purchase price and the sales tax thereon, to the purchaser or consumer* as the return statute, Tenn. Code Ann. § 67-6-507(c), requires. Accordingly, we respectfully disagree with the Chancellor's alternative conclusion that Value Motor should be able to take a sales tax credit on the return of the first vehicle under the provisions of Tenn. Code Ann. § 67-6-507(c). Based upon the facts of this case, it is not entitled to such a credit.

ATTORNEY'S FEES

Both parties seek to recover their respective attorneys fees and expenses incurred in this litigation pursuant to Tenn. Code Ann. § 67-1-1803(d). Tennessee follows the American Rule with regard to attorneys fees, which provides that, absent a statute or agreement to the contrary, each litigant is responsible for paying its own attorney's fees and litigation expenses. *State v. Brown & Williamson Tobacco Corp.*, 18 S.W.3d 186, 194 (Tenn. 2000). The General Assembly enacted a statute that mandates an award of reasonable attorneys' fees and expenses to the prevailing party in tax litigation pursuant to Tenn. Code Ann. § 67-1-1803. The relevant portion of the statute provides:

> The court *shall* award to the prevailing party reasonable attorneys' fees and expenses of litigation up to twenty percent (20%) of the amount assessed or denied, including interest after payment. For purposes of this subsection (d), attorneys' fees shall not exceed fees calculated on the basis of reasonable hourly rates multiplied by a reasonable number of hours expended in the case and shall not be calculated by application of any premium, enhancement, or contingency.

Tenn. Code Ann. § 67-1-1803(d) (emphasis added). It is up to the trial court to set the amount of fees within the guidelines set forth in the statute. *Carson Creek Vacation Resorts, Inc. v. State, Dept. of Revenue*, 865 S.W.2d 1, 2 (Tenn. 1993).

The Department prevailed on the matters in controversy; therefore, the Department is entitled to an award of attorneys fees and expenses arising from this litigation, which includes its fees and expenses in the trial court and on appeal. *See Carson Creek Vacation Resorts, Inc.* 865 S.W.2d at 2. We therefore remand to the trial court for a proper determination of the fees and expenses the department is entitled to recover pursuant to Tenn. Code Ann. § 67-1-1803(d).

IN CONCLUSION

The judgment of the trial court is affirmed in part and reversed in part, and this matter is remanded to the trial court to determine the deficiency, including interest thereon, owing by Value Motor, to determine the fees and expenses the Department is entitled to recover pursuant to Tenn. Code Ann. § 67-1-1803(d), and for such other proceedings as may be appropriate. Costs of appeal are assessed against Value Motor Company, Inc.

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FRANK G. CLEMENT, JR., JUDGE